46 Phil. 791

[G.R. No. 20048. March 02, 1923]

NICOMEDES DE LOS SANTOS, PETITIONER, VS. HONORABLE EMILIO MAPA ET AL., RESPONDENTS.

D E C I S I O N

ROMUALDEZ, J.:

In this proceeding the petitioner prays that a writ of certiorari be issued, directing the Court of First Instance of Nueva Ecija to transmit to this court the record of civil case No. 2770 of that court, together with the evidence therein introduced, consisting of certificate of title No. 469, and a certified copy of its judgment and that of this court rendered in civil case No. 1829 and of the claim of Lorenza Veneracion; that a preliminary injunction be issued *ex parte* enjoining the respondents from proceeding with the sale of the land described in the notice of sale, Exhibit D of the petitioner, and that after a hearing of the case, judgment be rendered declaring the orders of June 28, 1922, and August 10th of the same year null and void and to make the preliminary injunction applied for absolute.

By a resolution of December 16, 1922, this court denied this petition, but upon motion for a reconsideration filed by the petitioner, this court under date of January 11, 1923, ordered the respondents to be required to demur to, or answer, the complaint of the petitioner within ten days from notice thereof.

In compliance with that last order, the respondents filed a demurrer on the ground that the facts alleged in the petition were without legal ground and did not constitute a cause of action.

In a motion filed February 1, 1923, to which the respondents presented a reply on the 10th of said month, the petitioner prays that this demurrer be not considered and the respondents be declared in default for not having given him

notice of the hearing of the demurrer, invoking Rule 40 of the Rules of this Court. But the fact is that by a resolution of this court of January 26, 1923, said demurrer was set for hearing on February 5, 1923, and nothing appears setting, or tending to set, aside said resolution which ignored the notice alluded to by the petitioner. The point is, therefore, already decided and disposed of by a final resolution. The petitioner's motion is denied.

The facts alleged by the petitioner in his complaint are: That through a valid purchase made in the year 1919, he became the owner of an undivided seven-eleventh part of the land registered under certificate of title No. 469 of the registry of lands of Nueva Ecija, and Lorenza Veneracion owned an undivided one-eleventh part of said property, having purchased the same from Jose Castañeda who, in turn, had acquired it by purchase from the original coparcener, owner of said undivided portion, Juan Medina 2.°.

The petitioner alleges that the sale of the undivided seven- eleventh part of the aforesaid property executed in his favor was duly noted by the proper register of deeds on the afore mentioned certificate of title, and that he is, and has been, in possession of said portions since the year 1919.

On October 19, 1921, a judgment was rendered by the court of that province in civil case No. 1829 of said court against Juan Medina 2.°, the remote predecessor in interest of Lorenza Verieracion in the portion acquired by the latter, sentencing said Juan Medina 2.° to pay the plaintiffs therein, Maria, Anacleta, and Isabelo Cabrera and Antonio Carpio, respondents herein, the sum of P4,500 with interest thereon and costs.

That judgment having become final, execution was issued on March 23, 1922, by virtue of which the sheriff levied an attachment upon the property aforementioned, whereupon the petitioner presented to said officer the proper claim, asking that the undivided portions of said property belonging to him be excluded from the attachment. And as the judgment creditors gave the proper indemnity bond, the sheriff proceeded with the attachment of the property and arranged the sale thereof, with the exception of the portion belonging to Lorenza Veneracion, which was excluded at her instance.

The petitioner brought suit, which was docketed as civil case No. 2770 of

that court, wherein he claimed his title to an undivided seven-eleventh part of the aforementioned property, and applied for an *ex parte* preliminary injunction against the sheriff and the aforesaid judgment creditors ordering the said officer to refrain from proceeding with the sale of the portions of said property belonging to the petitioner. Upon the giving of the proper bond by the latter, that court then presided by the justice of the peace of the capital who was acting in lieu of the Judge of First Instance, then absent, issued the injunction applied for.

But later on, said court, presided by the respondent judge, and at the instance of the judgment creditors and without the latter having given any bond, set aside the injunction, and the sheriff continued the proceedings for the sale of the property, excluding the portion belonging to Lorenza Veneracion, but without excluding the portions of the petitioner. And the court refused to reconsider this last order notwithstanding the application made by the herein petitioner to that effect.

This action of the respondent judge in setting aside the aforesaid injunction is the subject-matter of petitioner’s complaint. The petitioner alleges that this order of the lower court annulling the injunction and its refusal to reconsider the same are void, as done in excess of jurisdiction and prejudicial to his rights.

There can be no doubt that the Court of First Instance of Nueva Ecija had and does have jurisdiction to issue injunctions and dissolve them in any case pending therein, in accordance with the provisions of section 56, No. 7, of the Organic Act No. 136, and of sections 163 and 169 of the Code of Civil Procedure. Such jurisdiction was recognized by the petitioner himself by going to that court and applying for and obtaining the aforesaid injunction, which was afterwards dissolved by the respondent judge.

The fact that the latter set aside such a remedy does not necessarily constitute an excess of jurisdiction. The complaint by which this proceeding was commenced does not show the reason why that court dissolved the preliminary injunction in question, which had been issued *ex parte*. Section 169 of the Code of Civil Procedure enumerates the cases in which such an injunction may be dissolved, and the complaint herein does not state facts sufficient for

determining whether or not the respondent judge exceeded his jurisdiction in doing so in the case referred to by the petitioner.

Furthermore, no damage can result to the rights of the petitioner over the undivided seven-eleventh part of the land under execution, since, as he alleges in his complaint, said property was registered under the Torrens system, that is to say, under the Land Registration Act No. 496 and the purchase made by him of an undivided seven-eleventh part is duly noted on the back of the corresponding certificate of title. Neither the attachment levied nor the sale under that execution could in any way affect the rights of the petitioner, which were, on the other hand, secured by a proper bond in favor of the sheriff, which, according to the petitioner himself, was given by the judgment creditors, in view of the claim presented by him to said officer, requesting the exclusion of said share from the proceedings.

The case of Yangco *vs*. Rohde (1 Phil., 404), cited by the petitioner, was a petition for a writ of prohibition which was issued by this court, for it was there proven that the respondent judge had exceeded his jurisdiction in allowing support to a woman whose status as a wife did not appear certain and was in question. This uncertainty was considered by this court in that case to be evident, this court being of the opinion that the respondent judge had clearly exceeded his jurisdiction. And even then there was a dissenting opinion, that of Justice Cooper, who maintained that in view of the jurisdiction which the courts of first instance had over divorce cases, the allowance of support *pendente lite* was an incident to said jurisdiction, and therefore the order for the payment of support, even if it were erroneous, would not constitute an excess of jurisdiction.

From the complaint before us, it does not appear that the respondent judge exceeded his jurisdiction, nor is it shown that from the action of said judge, which is complained of, any damage could result to the petitioner.

The demurrer filed by the respondents is sustained, the petitioner being allowed to amend his complaint within the period prescribed by the Rules. So ordered.

Araullo, C.J., Street, Malcolm, Avanceña, Ostrand, and

Johns, JJ., concur.

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